

**THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

W. R. GRACE & CO., *et al.*,

Debtors.

Chapter 11

Case No. 01-1139 (JKF)

(Jointly Administered)

Re: D.I. 20872; 23177; 23474

**POST-TRIAL STATEMENT AND RESERVATION OF RIGHTS  
BY FRESENIUS MEDICAL CARE HOLDINGS, INC. AND  
NATIONAL MEDICAL CARE, INC.**

1. Pursuant to the Order Establishing Schedule of Post-Trial Briefing and Related Matters (Docket No. 23567) (the “*Order*”), Fresenius Medical Care Holdings, Inc. and National Medical Care, Inc. (collectively, “*Fresenius*”), parties in interest, by and through their undersigned counsel, hereby file this post-trial statement and reservation of rights. In the Order, the Court establishes November 20, 2009 as the deadline for filing post-trial reply briefs.

2. Fresenius has reviewed (a) the First Amended Joint Plan of Reorganization dated February 27, 2009 (Docket No. 20872), as subsequently modified on September 4, 2009 (Docket No. 23177) and on October 12, 2009 (Docket No. 23474) (the “*Plan*”),<sup>1</sup> (b) the objections and pre-trial and post-trial briefs that have been filed by various parties opposing provisions of the Plan that provide for protections in favor of the Fresenius Indemnified Parties (the “*Objections*”), and (c) the pre-trial and post-trial briefs that have been filed by the Plan Proponents in support of the Plan (the “*Plan Proponents’ Briefs*”). Fresenius believes that the Objections are without merit as to provisions of the Plan that provide for

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<sup>1</sup> Capitalized terms that are not defined herein have the meanings ascribed to such terms in the Plan.

protections in favor of the Fresenius Indemnified Parties and should be overruled, including for the reasons set forth in the Plan Proponents' Briefs.

3. In addition, Fresenius acknowledges that, to the best of its knowledge, information, and belief, the Debtors, the Asbestos PI Committee, the Asbestos PI FCR, the Asbestos PI TAC, or the Asbestos PI Trustees have (i) promptly provided to Fresenius all "*Material Drafts*" (as defined in Section 7.7(II) of the Plan) of the Asbestos PI Trust Agreement and each related "*Trust Document*" (as defined in Section 7.7(II) of the Plan) (but excluding or redacting drafts of the Asbestos PI TDP), and (ii) incorporated promptly (if it was the party drafting such document), or if otherwise, urged the party drafting such document promptly to incorporate, into any such document each provision with respect to the subject matter set forth or referred to in paragraphs II(c)(ix), (x), and (xi) paragraph VI(g), clauses (i)(A) through (D), and paragraph VI(c) of the "*Sealed Air Settlement Agreement*" (as defined in the Plan) that were reasonably requested by Fresenius.

4. Fresenius further acknowledges that, to the best of its knowledge, information, and belief, the Debtors, the Asbestos PD Committee, or the Asbestos PD FCR have (i) promptly provided to Fresenius all "*Material Drafts*" (as defined in Section 7.7(mm) of the Plan) of the Asbestos PD Trust Agreement and each related "*Trust Document*" (as defined in Section 7.7(mm) of the Plan) (but excluding or redacting drafts of the ZAI TDP), and (ii) incorporated promptly (if it was the party drafting such document), or if otherwise, urged the party drafting such document promptly to incorporate, into any such document each provision with respect to the subject matter set forth or referred to in paragraphs II(c)(ix), (x), and (xi) paragraph VI(g), clauses (i)(A) through (D), and paragraph VI(c) of the Sealed Air Settlement Agreement that were reasonably requested by Fresenius.

5. This Statement is based upon, and limited to, the Plan, the Objections, the Plan Proponents' Briefs, the Asbestos PI Trust Agreement, and the Asbestos PD Trust Agreement that were filed with the Court as of November 19, 2009. Fresenius reserves all rights with respect to any Plan modifications, Objections, Plan Proponents' Briefs, Asbestos PI Trust Agreement modifications, and Asbestos PD Trust Agreement modifications that may thereafter be filed or made.

Dated: Wilmington, Delaware  
November 20, 2009

MORRIS, NICHOLS, ARSHT & TUNNELL  
LLP

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